Supreme Court, U.S.
FILED
DEC 20 1985
JOSEPH F. SPANIOL, JR.
CLERK

(7)

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

No. 84-6859

RONALD DeRAY SKIPPER, Petitioner,

versus,

STATE OF SOUTH CAROLINA, Respondent.

On Writ of Certiorari To
The Supreme Court of South Carolina

BRIEF OF RESPONDENT

T. TRAVIS MEDLOCK
Attorney General

* HAROLD M. COOMBS, JR.
Assistant Attorney General

Post Office Box 11549
Columbia, S.C. 29211

ATTORNEYS FOR RESPONDENT.

* Counsel of Record

BEST AVAILABLE COPY

40pp

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

No. 84-6859

RONALD DeRAY SKIPPER, Petitioner,

versus,

STATE OF SOUTH CAROLINA, Respondent.

On Writ of Certiorari To
The Supreme Court of South Carolina

BRIEF OF RESPONDENT

T. TRAVIS MEDLOCK
Attorney General

* HAROLD M. COOMBS, JR.
Assistant Attorney General

Post Office Box 11549
Columbia, S.C. 29211

ATTORNEYS FOR RESPONDENT.

* Counsel of Record

QUESTION PRESENTED

I.

Does the Supreme Court of South Carolina recognize and apply reasonably the Court's mandate in Lockett v. Ohio and Eddings v. Oklahoma that relevant mitigating evidence concerning a defendant's character and circumstances of the offense must be considered during a capital sentencing proceeding?

INDEX

Cases Involved ---------- iii

Statement of Case ---------- 1

Summary of Argument ---------- 8

Argument ---------- 9

Conclusion ---------- 34

CASES INVOLVED

Addington v. Texas, 441 U.S. 418 (1979) ---------- 18

Barefoot v. Estelle, 463 U.S. 880 (1983) ---------- 18, 19, 28

California v. Ramos, 463 U.S. 992 (1983) ---------- 16

Eddings v. Oklahoma, 455 U.S. 104 (1982) ---------- 7, 8, 9, 10, 30, 31, 32

Furman v. Georgia, 408 U.S. 238 (1972) ---------- 21

Gregg v. Georgia, 428 U.S. 153 (1976) ---------- 10, 20, 22

Jurek v. Texas, 428 U.S. 262 (1976) ---------- 15, 21, 26

Lockett v. Ohio, 438 U.S. 586 (1978) ---- 6, 7, 8, 9, 10, 24, 25, 26, 32

McGautha v. California, 402 U.S. 183 (1971) ---------- 32

Proffitt v. Florida, 428 U.S. 242 (1976) ---------- 22

State v. Chaffee, ___ S.C. ___, 328 S.E.2d 464 (1984), cert. denied, 105 S.Ct. 1878 (1985) ---------- 29

State v. Elmore, ___ S.C. ___, 332 S.E.2d 762 (1985), petition for cert. filed, July 10, 1985 ---- 30

State v. Koon, 278 S.C. 528, 298 S.E. 2d 769 (1982) ---------- 7, 28

State v. Koon, ___ S.C. ___, 328 S.E. 2d 625 (1984), cert. denied, 105 S. Ct. 2056 (1985) ---------- 6, 28

State v. Patterson, ___ S.C. ___, 327 S.E.2d 650 (1984), cert. denied, 105 S.Ct. 2056 (1985) --------- 29

State v. Plath, 281 S.C. 1, 313 S.E. 2d 619 (1984) --------- 19, 27, 28

State v. Skipper, ___ S.C. ___, 328 S.E.2d 58 (1985) -------- 2, 7, 30

State v. Stewart, 283 S.C. 104, 320 S.E.2d 447 (1984) ---------- 29

State v. Taylor, 57 S.C. 483, 35 S.E. 729 (1900) ---------- 17

State v. Woomer, 278 S.C. 468, 299 S.E. 2d 317 (1982) ---------- 18, 27

Statutes:

S.C. Code 1976 Section 16-3-26 (B) (1984) ---------- 19

Other Authorities:

7 Wigmore, Evidence §§ 1918, 1976 (Chadbourn rev. 1978) --------- 17

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

No. 84-6859

RONALD DeRAY SKIPPER, Petitioner,

versus,

STATE OF SOUTH CAROLINA, Respondent.

On Writ of Certiorari To
The Supreme Court of South Carolina

BRIEF OF RESPONDENT

STATEMENT

The defendant was convicted of murder and first degree criminal sexual conduct (rape). He was sentenced to death and thirty (30) years imprisonment. His conviction and sentence were

affirmed by the South Carolina Supreme Court. State v. Skipper, ___ S.C. ___, 328 S.E.2d 58 (1985). (A. 15-23).

A distinction between the admissibility of lay witnesses' observations of past behavior in prison and predictions of future adjustment to prison life is recognized under South Carolina case law. Evidence of demonstrated past behavior in prison bears on a defendant's character and is relevant and properly admissible. A lay witness's prediction of future adaptability to prison life does not bear upon a defendant's character, prior record, or the circumstances of his offense, and is properly excluded from evidence since it is irrelevant.

During the sentencing phase of his trial, the defendant overlooked the distinction between admissible testimony

describing his past adjustment to prison life and inadmissible lay witness testimony predicting future adjustment to prison life. After freely introducing evidence of defendant's past good behavior in making a good adjustment to prison life, the defendant sought to introduce testimony from the same witness (his former wife) concerning her prediction as to his future adaptability to prison life. The Solicitor's objection to this latter testimony was sustained. The defendant then made an offer of proof concerning his past good behavior and good adjustment to prison life. The trial judge ruled that testimony of the defendant's "adjustability to prison life" was inadmissible. (A. 9-12). The trial judge admitted testimony into evidence

encompassing both past good behavior and some predictions of future adaptability:

1. Prior to asking his witness (defendant's former wife) about future adaptability to prison conditions and making his offer of proof, the defendant's counsel elicited, without objection, testimony that defendant had already made a good adjustment to prison life. (A. 10).

2. The defendant's mother testified that the defendant had been free of drugs since the date of his arrest. (Tr. p. 1148, lines 23-25).

3. The defendant testified that prison provided him with education in mechanics which complimented prior experience and training in the field and led him to set a lifetime career objective. (Tr. p. 1033, lines 11-16).

4. The defendant, a skilled mechanic, believed that he could work in prison at the minimum wage during the course of a life sentence and help his children get a good education. (Tr. p. 1033, line 17-p. 1034, line 17). (A. 4-5).

5. The defendant, by his own testimony, had made a good adjustment to prison life and wanted to do his time and get out of prison. The defendant liked his jailers; the jailers were good to him, and the defendant tried to be good to them. (A. 5-6).

On direct appeal to the South Carolina Supreme Court the defendant was concerned that his wife's testimony, Mrs. Henry's testimony (Carolyn Henry, a regular visitor [A. 11]), and his own testimony concerning his "up to then" adjustment to prison life should have

been admitted under State v. Koon, ___ S.C. ___, 328 S.E.2d 625 (1984), cert. denied, 105 S.Ct. 2056 (1985) and Lockett v. Ohio, 438 U.S. 586 (1978). (Brief of App., pp. 56-57). In his state appellate brief the defendant merely noted in passing that his wife was not permitted to answer and give her opinion concerning his potential for a good adjustment to prison life over an extended period of time. (Brief of App., pp. 54-55).

In light of the defendant's focus upon the argument that his "up to then' adjustment to prison life should have been admitted...." into evidence and the record before the court, the South Carolina Supreme Court found that the defendant's complaint was without merit.

> Next, Appellant charges error in refusal of the trial judge to permit testimony of

> Appellant's adjustment to prison life. We disagree.
>
> The trial judge properly refused to admit evidence of Appellant's future adaptability to prison life. State v. Koon, [278 S.C. 528, 298 S.E.2d 769 (1982)]. However, evidence of his past adaptability was admitted through testimony of his former wife, his mother and his own testimony. This contention is without merit. State v. Skipper, ___ S.C. ___, 328 S.E.2d 58 (1985) (A. at 21) (emphasis in original).

This Court granted certiorari limited to one question: "In this capital case, did the exclusion of mitigating evidence tending to show that petitioner would probably make a favorable adjustment to prison if his life was spared violate petitioner's rights under Lockett v. Ohio and Eddings v. Oklahoma?"

SUMMARY OF ARGUMENT

The rule of Lockett v. Ohio and Eddings v. Oklahoma requires that a capital sentencing jury be afforded the opportunity to consider any proffered mitigating aspect of the defendant's individual characteristics and the circumstances of the offense. The rule is properly applied when the sentencing jury's objective consideration is focused, and the risk of an arbitrary and capricious exercise of sentencing discretion minimized. The admission of any type of evidence which a defendant may proffer in mitigation -- so long as a sympathetically disposed trial judge conceives of no resulting prejudice -- can only insure the potential for arbitrariness in sentencing. Where the state court has held that evidence of actual past behavior in prison is

evidence of an aspect of a defendant's character and admissible, but evidence of a lay witness's prediction of future adaptability to prison life is irrelevant, a determination has been made affecting the focus of the sentencing jury's consideration, and this Court should not substitute its judgment.

I.

THE SUPREME COURT OF SOUTH CAROLINA RECOGNIZES AND APPLIES THE COURT'S MANDATE IN LOCKETT V. OHIO AND EDDINGS V. OKLAHOMA THAT RELEVANT MITIGATING EVIDENCE CONCERNING A DEFENDANT'S CHARACTER AND CIRCUMSTANCES OF THE OFFENSE MUST BE CONSIDERED DURING A CAPITAL SENTENCING PROCEEDING. NO REASONABLE INTERPRETATION OF THESE CASES REQUIRES THAT THEY BE APPLIED CONTRARY TO THEIR PURPOSE.

The South Carolina Supreme Court has consistently followed this Court's mandate that all relevant mitigating evidence of a defendant's character and circumstances of the offense must be considered during a capital sentencing proceeding. Nothing in either the Constitution or this Court's decisions require that the sentencing authority consider any and all supposed mitigating evidence which a defendant may propound. In practice where the sentencing authority is a jury, it is essential that Lockett v. Ohio, 438 U.S. 586 (1978) and Eddings v. Oklahoma, 455 U.S. 104 (1982) be applied consistently with Gregg v. Georgia, 428 U.S. 153 (1976) to focus the jury's responsibility and minimize the risk of arbitrary and capricious action.

The trial record demonstrates some confusion between the nature of the evidence subject to objection and the nature of the evidence offered by the defendant to preserve his assignment of error for appeal. The defendant vacillates: He proposes testimony from jail guards and a jail visitor (Carolyn Henry) concerning his present ability to be rehabilitated (considered admissible by the trial judge as long as it demonstrated the defendant's characteristics, A. 3-4); he offers opinion concerning past adjustment (ruled admissible, A. 10); after an objection is sustained to a lay witness's opinion of future behavior, the defendant offers testimony, by the two jailers and the prison visitor, of an accomplished good adjustment to prison (A. 10-11); the defendant's complaint on

appeal to the South Carolina Supreme Court, with the exception of one brief note, is that his "up to then" adjustment to prison life should have been admitted (Brief of App. pp. 54-57) (emphasis added); the defendant now urges this Court's review of a question premised upon the claimed exclusion of mitigating evidence tending to show the probability of a favorable future adjustment to prison. (Brief for Pet. p. i).

The only thread of consistency throughout these offers of evidence and complaints is that all relevant evidence concerning the defendant's character and circumstances of the offense was admitted into evidence for the sentencing jury's consideration. The trial judge admitted into evidence all testimony plainly offered for the purpose of

proving the defendant's good conduct in prison (A. 5-10); (Tr. p. 1033, lines 11-16; p. 1148, lines 23-25). Additionally, the defendant himself was able to testify that in light of his positive accomplishments and good adjustment in prison, he looked forward to working in prison for the benefit of his children during a life sentence. (Tr. p. 1033, line 11-p. 1034, line 17; A. 4-6). The mitigating evidence which was, undeniably, presented to the sentencing jury -- demonstrating the defendant's good adjustment to prison and optimistic outlook for both a well adjusted and productive beneficial life during future imprisonment -- leaves the defendant no credible assignment of error. The defendant's assertion before this Court that the trial judge's rulings excluded mitigating testimony of two jail guards

and a jail visitor (Mrs. Henry) concerning his good adjustment to jail (Brief for Pet. pp. 8-9) is not fairly supported by the record. Insofar as the defendant wished to offer testimony of his good conduct and adjustment in jail which tended to prove his personal characteristics, the record demonstrates that it was admissible. (E.g., A. 3-6).

The trial judge excluded only one type of proffered mitigating evidence from the sentencing jury's consideration -- opinion testimony of lay witnesses (apart from the defendant himself) offered to predict the defendant's future adjustment to prison life. (E.g., A. 10). The Texas capital sentencing statutes require the jury to determine the likelihood of a defendant's continuing threat to society through the commission of future acts of

violence. In upholding the constitutionality of the statutes, this Court has noted that while predictions of future behavior and future criminal conduct are difficult, a prediction of future criminal conduct is often an element of decisions which are routinely made throughout the criminal justice system. "[A]ny sentencing authority must predict a convicted person's probable future conduct when it engages in the process of determining what punishment to impose." Jurek v. Texas, 428 U.S. 262, 274-275 (1976). The prediction of the defendant's future conduct is the sentencing jury's responsibility, and the jury must have before it "all possible relevant information about the individual whose fate it must determine." Id. at 275-276 (emphasis

added); accord, California v. Ramos, 463 U.S. 992, 1002-1003 (1983).

There is no more authority requiring the admissibility of lay witnesses' predictions as to an issue which must be ultimately passed upon by the jury than there is for placing the burden of sentencing a defendant upon the shoulders of witnesses. The admission of lay predictions of future adaptability to prison life places a speculative conclusion before the jury which may be an element of their decision in recommending a sentence of either death or life imprisonment. Lay witnesses are not more able than the jury to determine the defendant's likelihood of future good conduct. And there is no special knowledge or expertise that a lay witness can contribute to the jury's decision making

process. The general rule is that the opinion of a lay witness is improper and irrelevant where the jury is able to draw and form its own opinion from matters in evidence. 7 Wigmore, Evidence §§ 1918, 1976 (Chadbourn rev. 1978); e.g., State v. Taylor, 57 S.C. 483, 35 S.E. 729 (1900). Permitting a lay witness to offer speculative opinion as to future conduct can only remove a prospective element of the jury's sentencing decision and confuse the jury with extraneous personal opinions that second guess the jury's responsibility and introduce an arbitrary factor into the deliberative process.

"Whether the individual is mentally ill and dangerous to either himself or others...turns on the meaning of the facts which must be interpreted by expert psychiatrists and psychologists."

Addington v. Texas, 441 U.S. 418, 429 (1979), cited in Barefoot v. Estelle, 463 U.S. 880, 898 (1983). Expert testimony concerning opinions of future dangerousness is admissible during the sentencing phase of a capital proceeding and is subject to testing through the adversary process -- including, of course, the defendant's presentation of his own side of the case and the opposing views of the defendant's doctors. Barefoot v. Estelle, 463 U.S. 880, 896-902 (1983). The South Carolina Supreme Court has held that expert testimony predictive of future dangerousness is admissible and subject to confrontation through the adversarial process during the sentencing phase of a capital proceeding, State v. Woomer, 278 S.C. 468, 299 S.E.2d 317 (1982), and is relevant information for the jury's

consideration of the defendant's individual characteristics and the circumstances of the crime. State v. Plath, 281 S.C. 1, 15, 313 S.E.2d 619 (1984), citing Barefoot v. Estelle, 463 U.S. 880 (1983). In the instance of indigency South Carolina provides that funds not exceeding $2,000 for expert services may be obtained through an ex parte proceeding (nunc pro tunc when necessary) before the court. South Carolina Code 1976 Section 16-3-26 (B) (1984).

The availability of jury sentencing in a capital case is desirable because it links the penal system with contemporary community values. But since the members of a sentencing jury will not have had experience in the sentencing process, sentencing information which enlightens and focuses the sentencing

jury upon the circumstances of the offense and the character of the offender is required in order to minimize the risk of arbitrary and capricious action. The admission of only relevant evidence concerning the crime and defendant is one means by which the jury can be carefully and adequately guided in their deliberations. Gregg v. Georgia, 428 U.S. 153, 188-195 (1976). This is entirely consistent with the constitutional mandate that the sentencing authority "have information sufficient to enable it to consider the character and individual circumstances of a defendant prior to imposition of a death sentence." Id., at 189 n. 38. (emphasis added).

"A jury must be allowed to consider on the basis of all relevant evidence not only why a death sentence should be

imposed, but also why it should not be imposed." Jurek v. Texas, 428 U.S. 262, 271 (1976) (emphasis added). The consideration of mitigating circumstances is required by the Eighth and Fourteenth Amendments and necessary to avoid unconstitutional mandatory capital sentencing procedures. Id. The capital sentencing procedure properly "guides and focuses the jury's objective consideration of the particularized circumstances of the individual offense and the individual offender before it can impose a sentence of death." Id., at 273-274.

Furman v. Georgia, 408 U.S 238 (1972) mandates that the sentencing body in a capital case must exercise discretion in a manner which is "suitably directed and limited so as to minimize the risk of wholly arbitrary and

capricious action." Gregg v. Georgia, 428 U.S. 153, 189 (1976). These requirements are met when the sentencing authority's discretion is directed to the examination of "specific factors" in favor of or against the imposition of the death penalty. The examination of the specific factors themselves focuses the sentencer's attention upon the particularized circumstances of the individual offense and the individual offender. This is what directs and limits the exercise of discretion in imposing sentence. It is not necessary that the various factors submitted to and considered by the sentencer have any predetermined weight assigned to them. Proffitt v. Florida, 428 U.S. 242, 257-258 (1976).

Nothing more is constitutionally required to permit the jury to fully

examine the specific factor of a defendant's past behavior and conduct in prison. If this or any other lay evidence implies future adaptability to prison life, the jury is free to consider the evidence and either draw or decline any inference which may be urged. Nothing requires that a lay witness's prediction -- his own speculative inference drawn from weighing his previous personal observations -- of a defendant's future conduct in prison be admitted for the jury's consideration. The lay witness's opinion can only be his assignment of his own predetermined weight to his observations before they are submitted to the sentencing jury. Of course, the jury has no way of knowing what factors received any particular weight in forming any witness's opinion and prediction of the

defendant's future adjustment to prison. The admission of a lay witness's prediction of future adaptability to prison life can lead only to the imposition of needless arbitrary factors in the sentencing phase of trial -- instead of focusing the sentencer's attention upon the particularized circumstances of the individual offender -- and is then properly excluded. Assuming that a defendant's constitutional rights include the introduction into evidence of anything which he offers in mitigation -- so long as a sympathetically disposed judge conceives of no resulting prejudice -- can only insure arbitrariness in sentencing. Lockett v. Ohio, 438 U.S. 586, 631 (1978) (Rehnquist, J., concurring and dissenting).

The Eighth and Fourteenth Amendments generally require that the sentencer in a capital case consider "any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." Lockett v. Ohio, 438 U.S. 586, 604 (1978) (the Court held unconstitutional three exclusive statutory mitigating factors that generally precluded consideration of potential fundamental mitigating factors such as a defendant's individual culpability, intent to cause death, and age). Of course, nothing in Lockett "limits the traditional authority of a court to exclude, as irrelevant, evidence not bearing on the defendant's character, prior record, or the circumstances of his offense. Id., at 604 n. 12. The

Court noted in Jurek v. Texas, 428 U.S. 262, 272-273 (1976) that the Texas Court of Criminal Appeals interpreted a statute "as to allow a defendant to bring to the jury's attention whatever mitigating circumstances he may be able to show[.]" This was in reference to the quoting of specified types of potential mitigating circumstances ([absence of] a significant criminal record; range and severity of prior criminal conduct; age of the defendant; whether defendant acted under duress or domination) from the Texas court's opinion. In this context "whatever mitigating circumstances [a defendant] may be able to show," never encompassed "any evidence which the defense attorney saw fit to present to a judge or jury." Lockett v. Ohio, 438 U.S. 586, 630

(1978) (Rehnquist, J. concurring and dissenting).

The decision of the South Carolina Supreme Court permits competent testimony of the likelihood of future nondangerousness and encourages the introduction of mitigating evidence which addresses the particular circumstances of an offense and the characteristics of the capital defendant. The opinions of lay witnesses predicting the future adaptability of a defendant to prison life and encompassing inane speculation as to "how often [the defendant] will take a shower or whether or not he will be lonely and withdrawn during [life imprisonment]," State v. Plath, infra, only contribute to arbitrariness in the sentencing proceeding and divert the jury. State v. Woomer, 278 S.C. 468, 299 S.E.2d 317, 319-320

(1982), cert. denied, 463 U.S. 1229 (1983) (predating Barefoot v. Estelle, 463 U.S. 880, holding that expert predictive testimony of future behavior may be admissible); State v. Koon, 278 S.C. 528, 298 S.E.2d 769 (1982) (Koon I) (future adaptability to prison life inadmissible); (State v. Koon, ___ S.C. ___, 328 S.E.2d 625 (1984), cert. denied, 105 S.Ct. 2056 (1985) (Koon II) ("evidence of actual past behavior....offered by a defendant is clearly an aspect of [defendant's] character and would be admissible as a mitigating factor....[but] future adaptability to prison [is] irrelevant evidence because it does not bear on a defendant's character, prior record, or the circumstances of his offense"); State v. Plath, 281 S.C. 1, 313 S.E.2d 619, 627, cert. denied, 104 S.Ct. 3560 (1984)

(expert testimony bearing on future behavior admissible, but testimony concerning potential adjustment to prison life irrelevant since jury does not need to know about matters of a defendant's future personal hygiene and whether he might be lonely during confinement); State v. Stewart, 283 S.C. 104, 320 S.E.2d 447, 450 (1984) ("future adaptability to prison is irrelevant because it does not bear upon a defendant's character, past behavior in prison is relevant because it does bear upon a defendant's character"); State v. Patterson, ___ S.C. ___, 327 S.E.2d 650, 653 (1984), cert. denied, 105 S.Ct. 2056 (1985) (future adaptability to prison life inadmissible, past behavior admissible to show character); State v. Chaffee, ___ S.C. ___, 328 S.E.2d 464, 471 (1984), cert. denied, 105 S.Ct. 1878

(1985) (testimony of future "adaptability...to the environment of prison life" is not relevant for sentencing); State v. Skipper, ___ S.C. ___, 328 S.E.2d 58 (1985) (evidence of "future adaptability to prison life," is inadmissible); State v. Elmore, ___ S.C. ___, 332 S.E.2d 762 (1985), petition for cert. filed, July 10, 1985 (No. 85-5087) (three prison guards' testimony of adaptability to prison life and rehabilitative characteristics irrelevant and properly excluded, but lay testimony of guards would necessarily have reflected past behavior and character and was then admissible).

Nothing in the present case is even remotely comparable to the exclusion of the typical relevant mitigating evidence in Eddings v. Oklahoma, 455 U.S. 104 (1982) where the sentencing judge would

not, as a matter of law, consider even fundamental characteristics of the juvenile defendant -- his wretched upbringing, background, and emotional disturbance. Id. at 107-109, 113-115. It is inconceivable that the exclusion of the defendant's proffered testimony, which was only cumulative to other testimony in the record, violated any constitutional right. The Eighth and Fourteenth Amendments to the Constitution require that a capital trial must be fairly conducted and the defendant's constitutional rights scrupulously respected. There is no constitutional guarantee to trial procedures which may purport to be the best of all worlds, or which accord with enlightened ideas of social scientists, or those which meet individual predilections of members of the Court, or even those which would

require the introduction into evidence of "any sort of mitigating evidence which an accused or his lawyer wishes to offer...." Lockett v. Ohio, 438 U.S. 586, 632-633 (Rehnquist, J., concurring and dissenting), citing McGautha v. California, 402 U.S. 183, 221 (1971). The Court has not dictated "the weight that a sentencing court must ascribe to the various factors which might be categorized as 'mitigating' nor...suggest[ed] that this Court may substitute its sentencing judgment for that of state courts in capital cases." Eddings v. Oklahoma, 455 U.S. 104, 122 (1982) (dissenting opinion). The Court should not now substitute its judgment for that of the state court in finding that a defendant's offer of particular evidence in mitigation may, as a matter of law, propound matter which is

irrelevant and foster arbitrary action and hinder the jury's due consideration of the defendant's individual characteristics and the circumstances of the crime.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the court below should be affirmed.

Respectfully submitted,

T. TRAVIS MEDLOCK
Attorney General

* HAROLD M. COOMBS, JR.
Assistant Attorney General

ATTORNEYS FOR RESPONDENT.

* Counsel of Record.